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IAB CASE NO. IV 2221167

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

INVESTIGATIVE SUMMARY

UNIT:	Compton Sheriff's Station
DATE:	Saturday, May 24, 2008
TIME:	0300 Hours
LOCATION:	Orange Avenue and Rosecrans Avenue, Paramount
URN#:	508-00034-2003-441
SUBJECT:	Sergeant Mark Fitzpatrick #[redacted]
IAB#:	IV 2221167

ALLEGATION:

It is alleged that Sergeant Mark Fitzpatrick (hereafter referred to as Subject Fitzpatrick), while on-duty, conducted a traffic stop of a female motorist and made inappropriate comments about her body, fondled her breast, and subsequently inserted his finger into her vagina. It is further alleged Subject Fitzpatrick failed to take appropriate police action after becoming aware the female may have been under influence of alcohol and was an unlicensed and uninsured motorist. Additionally it is alleged that Subject Fitzpatrick conducted traffic stops of other female motorists and did one or more of the following: made inappropriate comments about their bodies, had them arrange portions of their clothing to conduct a visual search for narcotics or contraband, and/or failed to take appropriate police action when made aware of municipal violations.

*Note: Regarding the allegation of Sexual Battery, The Los Angeles County District Attorney has filed charges against Subject Fitzpatrick pursuant to 289(g) PC - Sexual Penetration Under the Threat of Public Authority, 243.4(a) PC - Sexual Battery, and 236PC - False Imprisonment and trial is scheduled to begin in February, 2011 (Central Court Case # BA356774). For further information, see attached Internal Criminal Investigations Bureau case file **[Exhibit A]**.*

INVESTIGATION:

On May 30, 2008, Internal Criminal Investigations Bureau (ICIB) Sergeants Kelly Matthews and Susan Vaziri interviewed **Witness** [redacted] at her residence. The following is a summary of her statement: Witness [redacted] said that on May 24, 2008, she was driving in the city of Paramount when she was detained by Subject Fitzpatrick, an on-duty Los Angeles County Sheriff's Sergeant. She said he asked her if she had been drinking and she admitted that she had. Subject Fitzpatrick then proceeded to tell Witness [redacted] that it was his opinion she would not pass a sobriety test if given one. He then pointed his flashlight on her breasts and said, "Wow, those are nice, are those real?" When Witness [redacted] asked if she would be going to jail, Subject Fitzpatrick responded by telling her he doubted it, and that it may be her lucky night. Witness [redacted] said she asked Subject Fitzpatrick what he meant and he asked her to show her breasts to him. Fearing she would be arrested for driving under the influence if she did not comply, Witness [redacted] said she reached down and opened the top of her dress, which was designed to be worn without a bra, and she exposed her bare breasts. She quickly closed the top of the dress and moments later felt Subject Fitzpatrick's hand go inside of her dress, at which time Subject Fitzpatrick fondled her right breast. Witness [redacted] said there were radio cars across the street from where she was being detained and when she mentioned it to Subject Fitzpatrick, he said the deputies were probably responding to an alarm call.

Witness [redacted] said she asked Subject Fitzpatrick if she was free to leave at which time he said he did not think so and began asking her how far her home was from the location they were at. He proceeded to tell her that he was going to do her a "favor" and escort her home. Subject Fitzpatrick followed Witness [redacted] to her residence, which was approximately five minutes away. When she arrived home, she was exiting her vehicle when Subject Fitzpatrick walked up to her and asked for her phone number. Witness [redacted] gave Subject Fitzpatrick her phone number and thanked him for escorting her home. At that time, Subject Fitzpatrick stopped her and reminded her that she could have been arrested for driving under the influence and her car could have been impounded. He then asked her what she was going to do for him in return. Witness [redacted] said she asked Subject Fitzpatrick what he wanted her to do, at which time he asked her how closely shaven she was. After providing him with a response, Subject Fitzpatrick said he wanted to see. While standing in her driveway, Witness [redacted] reached down and pulled her leggings down, but left her underwear up. At that time Subject Fitzpatrick instructed Witness [redacted] to pull her underwear down as well. She said she complied, pulling her underwear down and exposing her genitals, and then quickly pulling her leggings and underwear back up. Subject Fitzpatrick told her he was not able to see and instructed her to repeat what she had just done. While kneeling in front of her, Subject Fitzpatrick watched Witness [redacted] pull her underwear and leggings down a second time. He then instructed her to open her vagina. Using her fingers to form a "V", Witness [redacted] opened her vagina, at which time she felt Subject Fitzpatrick's hand on her vagina. Immediately following, she felt the tip of his middle finger penetrate her. Suddenly, Witness [redacted] said she saw a vehicle driving up the street so she pushed Subject Fitzpatrick away from her

and pulled her undergarments back up.

Witness [redacted] said she used that vehicle as an excuse to get away and said she had to leave before someone saw them. Subject Fitzpatrick gave Witness [redacted] a hug goodbye and said he would he calling her. Witness [redacted] said she went into her house and, moments later, her phone began to ring. She noticed the number had a "[redacted]" area code, which she did not recognize as belonging to anyone she knew, so she assumed it was Subject Fitzpatrick calling her. She said her assumptions were correct, as Subject Fitzpatrick called her and left voice mail messages from that same"[redacted]" number on several occasions.

IAB Note: The telephone number was confirmed by ICIB as belonging to Subject Fitzpatrick.

During her interview with ICIB Investigators, Witness [redacted] was shown a "six pack" photo line-up. She identified Subject Fitzpatrick as the person involved in the incident and said she was desirous of prosecution. IAB Investigators reviewed the audio taped interview of this witness and found statements made to be consistent with ICIB's summary. For further information regarding this interview and the information obtained to support some of Witness [redacted] statements, see pages 3 through 9 of ICIB Case Book #1 **[Exhibit A]**.

IAB Note: A check of Subject Fitzpatrick's log revealed her ran the license plate for the car which Witness [redacted] was driving that night. For further information, see page 23 of ICIB Case Book #1.

On May 13, 2010, ICIB Sergeant Kelly Matthews interviewed **Deputy Patrick Morey**, who was identified as being at a location that was across the street from the location where Witness [redacted] was being detained on May 24, 2008. Deputy Morey said he was, in fact, at the location across the street handling an audible alarm call with his partner, Deputy Matthew Landreth. Deputy Morey said he remembered seeing a male sergeant on a traffic stop with a female motorist, but could not remember anything unusual about the stop. IAB Investigators reviewed the audio taped interview of this witness and found statements made to be consistent with ICIB's summary. For further information regarding the audible alarm see page 39W of the ICIB Case Book **[Exhibit A]**. For further information on this interview, see pages 19I and 19J of the ICIB Case Book **[Exhibit A]**.

On May 13, 2010, ICIB Sergeant Kelly Matthews interviewed **Deputy Matthew Landreth**, who was identified as being at a location that was across the street from the location where Witness [redacted] was being detained on May 24, 2008. Deputy Landreth said he was, in fact, at the location across the street handling an audible alarm call with his partner, Deputy Patrick Morey. Deputy Landreth said he remembered seeing a male sergeant on a traffic stop with a female motorist, but could not remember anything unusual about the stop. IAB Investigators reviewed the audio taped interview of this witness and found statements made to be consistent with ICIB's summary. For further information regarding the audible

alarm see page 39W of the ICIB Case Book **[Exhibit A]**. For further information, see pages 19J and 19K of the ICIB Case Book **[Exhibit A]**.

On June 3, 2008, ICIB Sergeants Kelly Matthews and Victor Lewandowski interviewed **Witness** [redacted] at her residence. Witness [redacted] was identified through Subject Fitzpatrick's Mobile Digital Terminal (MDT) records as having her license plate and driver's license number ran. She said she was in a vehicle with two other females when she was stopped and asked if she was aware she had an outstanding warrant for possession of marijuana. After being asked if she had any marijuana in her vehicle and answering, "no," Witness [redacted] was told to take care of her warrant and she was free to leave. When ICIB investigators asked Witness [redacted] if anything unusual occurred with the law enforcement officer who stopped her, she said nothing unusual occurred. IAB Investigators reviewed the audio taped interview and found statements made by this witness to be consistent with the ICIB Investigator's summary. For additional information regarding this interview, see page 12 of ICIB Case Book #1 **[Exhibit A]**.

On June 19, 2008, ICIB Sergeant Kelly Matthews interviewed **Witness** [redacted] at her residence. Witness [redacted] was identified through Subject Fitzpatrick's digital records as having her license plate number and drivers's license number ran. Witness [redacted] said she was driving a vehicle with a [redacted] as a passenger in mid-May when she was stopped for speeding. She said that after being asked if she was possessing narcotics, Subject Fitzpatrick instructed her to exit her vehicle and walk to the passenger's side of his patrol vehicle. He told her to re-arrange her clothing by pulling her blouse and bra away from her body and pulling the waistband of her pants away from her body. She said Subject Fitzpatrick shined his flashlight on her breasts and her front waistband area when she was re-arranging her clothing. Witness [redacted] said Subject Fitzpatrick never touched her, but described her contact with him as "weird," "uncomfortable," and "awkward." She said she was released without a citation. IAB Investigators reviewed the audio taped interview and found statements made by this witness to be consistent with the ICIB Investigator's summary. For further information regarding this interview, see pages 13 through 15 of ICIB Case Book #1 **[Exhibit A]**.

On July 1, 2008, ICIB Sergeants Kelly Matthews and Robert Lopez interviewed **Witness** [redacted] in the ICIB Conference Room. Witness [redacted] was identified as the complainant in a Watch Commander's Service Comment Report (WCSCR). ICIB Investigators asked Witness [redacted] about the complaint, at which time she told them that on a date near May 27, 2008, she was driving her vehicle, alone, in Compton when she was stopped by Subject Fitzpatrick. She said after discovering she had no driver's license, Subject Fitzpatrick had her exit her vehicle and instructed her to sit in the front passenger seat of his patrol vehicle, where he had empty her pockets and her lift her bra away from her body. He then told her to unbutton her pants but she refused, telling him such actions would require having a female officer present. According to Witness [redacted] Subject Fitzpatrick commented on her body, saying things like, "you could be a porno star", "you have nice boobs", and told her he wanted to meet her after he got off work to have sex with

her. Witness [redacted] said she refused his offer and, after telling her he would "see her around", she was free to leave without a citation. She described Subject Fitzpatrick's behavior as "perverted" and said she felt violated. Witness [redacted] filed a WCSCR on June 19, 2008. IAB Investigators reviewed the audio taped interview and found statements made by this witness to be consistent with the ICIB Investigator's summary. For further information regarding the WCSCR, see page 34 of the ICIB Case Book #1 **[Exhibit A]**. For further information regarding this interview, see pages 15 through 18 of ICIB Case Book #1 **[Exhibit A]**.

On October 10, 2008, ICIB Sergeant Kelly Matthews interviewed **Witness** [redacted] at her residence. Witness [redacted] was identified through Subject Fitzpatrick's digital records as having her driver's license ran. Witness [redacted] told Sergeant Matthews that during the summer of 2008, she was driving alone when she was stopped for failing to stop at a stop sign. She said the person who stopped her asked her if she was wearing a shirt under her jacket. When she told him she was, she was told she was free to leave. When asked about the question asked by Subject Fitzpatrick, she said she thought the question was "strange." IAB Investigators reviewed the audio taped interview and found statements made by this witness to be consistent with the ICIB Investigator's summary. For further information regarding this interview, see pages 18 and 19 of ICIB Case Book #1 **[Exhibit A]**.

On March 16, 2009, ICIB Sergeant Kelly Matthews interviewed **Witness** [redacted] at her residence. Witness [redacted] was identified through Subject Fitzpatrick's digital records having her driver's license ran. She said that on an unknown date she was driving with a friend in Compton when she was stopped for unknown reasons. According to Witness [redacted] she admitted to Subject Fitzpatrick that she had been drinking prior to the traffic stop. She said Subject Fitzpatrick asked her if she was possessing narcotics and proceeded to have her exit the vehicle. He then told her to pull the mid-section of her dress outward. When asked by Subject Fitzpatrick if she had any tattoos, Witness [redacted] said she lifted up her dress to show him her tattoos. She said Subject Fitzpatrick asked her personal questions about where she lived with and who she lived with. When she told him she lived with her husband and her infant, he responded by telling her she was too young to be married and that she had a nice body for someone who had a small child. Shortly afterward, Subject Fitzpatrick had her return to the vehicle and asked her passenger ([redacted]) to exit. Witness [redacted] said her [redacted] arrived at the location and she and her [redacted] were free to leave. IAB Investigators reviewed the audio taped interview and found statements made by this witness to be consistent with the ICIB Investigator's summary. For further information regarding this interview, see pages 19A through 19C of ICIB Case Book #1 **[ExhibitA]**.

On March 19, Sergeant Kelly Matthews interviewed **Witness** [redacted] at a business in Compton. Witness [redacted] was named by [redacted] as being a passenger in a vehicle during a traffic stop. Witness [redacted] told Sergeant Matthews that on a cold evening in 2008, she was a passenger in Witness [redacted] vehicle when they were stopped for unknown

reasons. According to Witness [redacted], while her friend, Witness [redacted] was speaking to the officer who stopped them, she called Witness [redacted] to tell him they had been stopped. Soon after, she was asked by the officer to exit the vehicle. She was asked if she had tattoos and was asked if she had a boyfriend. Witness [redacted] said Witness [redacted] husband arrived at the traffic stop and they were allowed to leave with Witness [redacted] husband. IAB Investigators reviewed the audio taped interview and found statements made by this witness to be consistent with the ICIB Investigator's summary. For further information regarding this interview, see pages 19C and 19D of ICIB Case Book #1 **[Exhibit A]**.

SUBJECT INTERVIEW:

On October 21, 2010, a certified letter was sent to **Subject Fitzpatrick**, who is currently relieved of duty without pay. The letter offered him the opportunity to provide a voluntary statement regarding the allegations. Subject Fitzpatrick has declined the voluntary interview.

ADDITIONAL INFORMATION:

[redacted]



Leroy D. Baca, Sheriff

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



January 13, 2011

Sergeant Mark Fitzpatrick, #[redacted]

Dear Sergeant Fitzpatrick:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Sergeant, Item No. 2717A, with this Department, effective the close of business February 4, 2011.

An investigation under File Number IAB 2221167, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about May 24, 2008, you conducted a traffic stop of a lone female, Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession and/or treated Ms. [redacted] in a disrespectful and/or uncivil manner, as evidenced by, but not limited to, the following:

   a) pointing your flashlight at [redacted] breasts and then saying words to the effect of, "Wow, that's a really sexy outfit you've got there," and/or "Wow, those are nice. Are they real?" and/or;

   b) responding to [redacted] question about whether or not she was going to jail, by saying words to the effect of, "it may be your lucky night,"and when [redacted] asked

you what you meant by that, asking [redacted] if she would expose her bare breasts to you, and/or;

c) putting your hand inside [redacted] dress and fondling her bare breast, and/or;

d) telling [redacted] that you were going to do her a "favor" by escorting her to her residence and then inappropriately asking [redacted] for her telephone number, and/or;

e) reminding [redacted] that you could have arrested her for driving under the influence and could have impounded her car and then asking [redacted] what she was going to do for you in return, and/or;

f) asking [redacted] how "clean shaven" she was and then telling her you "wanted to see," and/or;

g) asking [redacted] what type of underwear she was wearing..."a thong...a G-string?" and/or;

h) instructing [redacted] to also pull down her underwear after she pulled down only her leggings, and/or;

i) while kneeling in front of [redacted] instructing her to pull her leggings and underwear down a second time and then telling her to "open her vagina," whereupon you placed your hand on her bare genitals and then penetrated her vagina with the tip of your finger, and/or;

j) putting your arms out to hug [redacted] after she gave you a little push and told you she had to go inside her residence, and/or;

j) telephoning [redacted] after she went inside her residence and calling her multiple times over the next several days and leaving messages.

Your actions in this incident are contrary to this Department's Core Values, Mission and Creed. You used your position of authority to intimidate and/or coerce [redacted] to expose her body to you.

Your actions simply cannot be tolerated. Moreover, your conduct has brought discredit upon yourself and the Los Angeles County Sheriff's Department and you have failed to conform to the work standards established for your rank and/or position as a sergeant.

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/050.15, Duties of Deputy Personnel; and/or 3-01/050.20, Duties of All Members, on or about May 24, 2008, you failed to perform your duties in a manner which would tend to establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Department and/or failed to take appropriate police action, as evidenced by, but not limited to, failing to properly perform field sobriety tests on a female motorist, [redacted] whom you suspected of driving under the influence of alcohol and/or allowing [redacted] to drive her vehicle home while potentially impaired.

3. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about May 2008, you conducted a traffic stop of Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) instructing [redacted] to re-arrange her clothing to check for contraband by pulling her blouse and bra away from her body and pulling the waistband of her pants away from her body, and then shining your flashlight on [redacted] breasts and front waistband area.

Your actions in this incident are contrary to this Department's Core Values, Mission and Creed. You used your position of authority to intimidate and/or coerce [redacted] to expose her body to you. Your actions simply cannot be tolerated. Thus, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department and you have failed to conform to the work standards established for your rank and/or position.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about May 27, 2008, you conducted a traffic stop of Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) instructing [redacted] to lift her bra away from her body and then telling her to unbutton and/or unzip her pants, and making the comment, "You could be a porno star" and/or "you have nice 'boobs'," or words to that effect, and/or;

   b) telling [redacted] you wanted to have sex with her.

   Your actions are contrary to this Department's Core Values, Mission and Creed. You used your position of authority to intimidate and/or coerce [redacted] to expose her body to you. Your actions simply cannot be tolerated. Thus, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department and you have failed to conform to the work standards established for your rank and/or position.

5. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about the Summer of 2008, you conducted a traffic stop of Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) asking [redacted] if she was wearing a shirt under her jacket.

   Your actions are contrary to this Department's Core Values, Mission and Creed. Thus, you have brought discredit upon yourself

and the Los Angeles County Sheriff's Department and you have failed to conform to the work standards established for your rank and/or position.

6. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about an unknown date in 2008, you conducted a traffic stop of Ms. [redacted] and her passenger, [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] and [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) asking [redacted] if she had any tattoos, and/or asking if you could see her tattoos, and/or;

   b) asking personal questions of [redacted] such as where she lived and with whom she lived, and when she responded that she lived with her [redacted], saying words to the effect of, "you are too young to be [redacted] and/or "you have a nice body for someone who has a [redacted]" and/or;

   c) asking [redacted] if she had any tattoos and/or asking [redacted] if she had a [redacted]

Your actions are contrary to this Department's Core Values, Mission and Creed. Thus, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department and you have failed to conform to the work standards established for your rank and/or position.

[redacted]

[redacted]

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Cecil Rhambo on February 3, 2011, at 1400 hours, in his office, which is located at Sheriff's Headquarters Building, 4700 Ramona Boulevard, Monterey Park, on the 4th Floor. If you are unable to appear at the scheduled time and wish to schedule some other time prior to February 3, 2011, for your oral response, please call Chief Rhambo's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Rhambo's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Rhambo's office by no later than February 3, 2011.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Joseph M. Gooden, A/Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

JMG:lh

c: Advocacy Unit
Employee Relations Unit
Chief Cecil Rhambo, FORII
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2221167)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

August 21, 2013

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***MARK FITZPATRICK*** *for a hearing on his* **suspension** *not to exceed thirty (30) days following judgment of a criminal matter, effective June 17, 2009, and* ***discharge****, effective February 4, 2011, from the position of Sergeant, Sheriff's Department,* **Case No. 11-055**.

The Civil Service Commission, at its meeting held on August 14, 2013 approved the findings in the above-entitled case. The objections submitted were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure, as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

LDC:se

Enclosure

c: Mark Fitzpatrick
Audra Call
Vincent McGowan
Carol Vendrillo

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the **suspension** not to exceed thirty (30) days following judgment of a criminal matter, effective June 17, 2009, and **discharge**, effective February 4, 2011, from the position of Sergeant, Sheriff's Department, of

MARK FITZPATRICK
(Case No. 11-055)

ORDER OF THE CIVIL SERVICE COMMISSION

On August 14, 2013, the Civil Service Commission of the County of Los Angeles, having read the foregoing Findings of Fact and good cause appearing therefor, overruled the petitioner's objections. The Commission adopted as its final decision the findings and recommendation of the Hearing Officer, Carol Vendrillo, to sustain the Department.

Dated this 21st day of August, 2013.

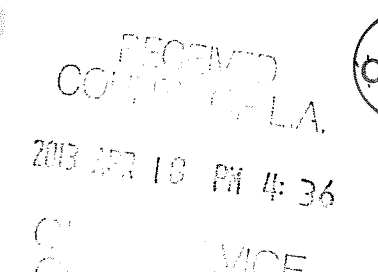
EVELYN V. MARTINEZ, President

LYNN ADKINS, Member

ABSENT
VANGE FELTON, Member

CAROL FOX, Member

Z. GREG KAHWAJIAN, Member




LOS ANGELES COUNTY


CIVIL SERVICE COMMISSION

In the matter of an Appeal

Between

MARK FITZPATRICK,
Appellant

and

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,
Respondent

Re: Discharge of Mark Fitzpatrick, Case No. 11-055

Hearing Officer

Carol A. Vendrillo, Esq.

April 16, 2013

Appearances:

For the Appellant:

Alfonso Estrada, Esq.
Green & Shinee
16055 Ventura Blvd., Suite 1000
Encino, CA 91436

For the Respondent/Department:

Vincent McGowan, Esq.
Law Offices of Hausman & Sosa
18757 Burbank Blvd., Suite 305
Tarzana, CA 91356-6329

INTRODUCTION

Following an investigation conducted by the Internal Affairs Bureau, Sergeant Mark Fitzpatrick was discharged from his position with the Los Angeles County Sheriff's Department on February 4, 2011 (Department Exhibit 2). The Appellant filed an appeal with the Civil Service Commission for the County of Los Angeles and a Notice of Hearing was issued by the Commission on June 16, 2011. On November 1, 2011, the parties appeared before the undersigned Hearing Officer at which time the Appellant's attorney informed the Hearing Officer that the Appellant was incarcerated. The Hearing Officer agreed to hold the matter in abeyance until the Appellant exercised his right to appeal his felony convictions.

At its meeting on September 26, 2012, the Commission denied the Department's motion to dismiss the appeal and ordered the Hearing Officer to "resume the hearing promptly." On November 15, 2012, this matter was again set for hearing on February 25 and 26, 2013.

On February 25, 2013, the parties appeared before the undersigned Hearing Officer in Los Angeles, California. The Department introduced documentary evidence and called one witness who provided sworn testimony on direct examination and was made available for cross-examination. On or about March 13, 2013, the Civil Service Commission provided the Hearing Officer with the parties' closing briefs and the matter was deemed submitted.

ISSUES

The issues in dispute are as follows:

Are the allegations contained in the Department's letter of February 4, 2011, true?

If any or all are true, is the discipline appropriate? [1]

FACTUAL SUMMARY

In May 2008, the Department's Internal Affairs Bureau received a complaint from a female who alleged that, during a traffic stop, a uniformed on-duty deputy grabbed her breast and digitally penetrated her vagina, against her will, under the threat of arrest (Department Exhibit 5). An investigation followed and the victim was interviewed by Sergeant Kelly Matthews of the Department's Internal Criminal Affairs Bureau. In June 2008, Sergeant Matthews interviewed other women who told him about interactions with the Appellant that involved sexually inappropriate conduct (Department Exhibit 5). All victims identified the Appellate from a photographic line-up (Department Exhibits 8, 11, and 12). Sergeant Matthews conducted additional investigations at the request of Deputy District Attorney Natalie Adomian, employed by the Justice System Integrity Division of the Los Angeles County District Attorney's Office (Department Exhibit 5).

On April 29, 2010, a criminal complaint was filed against the Appellant; he was charged with a six felony counts (Department Exhibit 2A).[2] (Department Exhibit 2A). It

On December 27, 2010, Cecil Rhambo, Chief of Field Operation Region II, directed that the Appellate be discharged from his position (Department Exhibit 3). On January 13, 2011, the Appellant was notified of the Department's intention to discharge him from his position of sergeant (Department Exhibit 1). The notice refers to several

[1] In its Notice dated November 15, 2012, the Civil Service Commission lists as a third issue in this matter: "Is there sufficient nexus between the criminal charges filed against petitioner and the duties of petitioner's position to support imposition of the non-disciplinary suspension of petitioner as set forth by the Department in its letter dated June 16, 2009?" The Appellant was discharged by letter dated February 4, 2011, one year and four months after the suspension was imposed. Neither the Appellant nor the Department raised the issue cited by the Commission that is relevant to the pre-discharge suspension.

[2] The charges included violations of Penal Code Section 289(g) (penetration under threat to arrest); Penal Code Section 243.4(a) (sexual battery by restraint); Penal Code Section 236 (false imprisonment by violence); and Penal Code Section 289(a)(1) (sexual penetration by foreign object).

incidents that occurred in May 2008, involving allegations of serious sexual misconduct directed at female drivers that occurred during the course traffic stops.[3]

The Appellant was served with a notice of discharge on February 4, 2011 (Department Exhibit 4). It reiterates several of the same allegations set out in the notice of intent to discharge.

On October 7, 2011, after a two-week jury trial, the Appellant was found guilty on all six counts and was remanded to custody (Department Exhibit 2A). The Appellant's Motion for a New Trial was denied and on May 25, 2012, he was sentenced to nine years and four months in state prison (Department Exhibit 2C).

PARTIES POSITIONS

The Appellant's position. Los Angeles County Civil Service Rule 4.12 establishes that the burden of proof in a discharge hearing "shall be with the appointing power." The Department's entire case rests on the hearsay and double hearsay statement of Sergeant Kelly Matthews of the Internal Criminal Investigations Bureau who has no direct knowledge of the events outlined in the discharge letter. Pursuant to Civil Service Rule 4.10 B, hearsay evidence shall be insufficient in itself to support a finding. The Appellant was not afforded his right to cross-examine and impeach any witnesses, as guaranteed by Civil Service Rule 4.07, because none of the alleged victims of the crimes testified at the civil service hearing. The Appellant has not been afforded his due process rights.

As established by *Pearson v. County of Los Angeles* (1957) 49 Cal.2d 523, the Appellant's felony conviction does not automatically disqualify him from his position

[3] The incidents involved foundling the women's breasts, placing his hands on their vaginas, shining his flashlight on the women's breasts and down their front waistband, instructing women to lift their bra away from their bodies and unzipping their pants, and telling the women that he wanted to have sex with them (Department Exhibit 1).

with the Los Angeles County Sheriff's Department. The principles of collateral estoppel and res judicata do not apply in this case because the criminal matter is not a final judgment on the merits; the Appellant filed a timely notice of appeal and the matter is still pending.

The Department's position. As a convicted felon, the Appellant is ineligible to work for a law enforcement agency such as the Los Angeles County Sheriff's Department. By operation of Government Code Section 1029, as a convicted felon, the Appellant is disqualified from holding office as a peace officer or being employed as a peace officer of the County. The Appellant's felony convictions cannot be expunged or set aside. As a convicted felon, the Appellant is prohibited by state and federal law from owning, using, or possessing a firearm. Accordingly, the Appellant cannot be reinstated to his position as a deputy sheriff or sergeant because he is subject to a condition that impairs his qualifications for his position or for continued County employment.

The Appellant's felony convictions render his civil service appeal moot. The only remedy provided in civil service proceedings when a County employee contests his or her discharge, i.e., reinstatement, is not available to the Appellant.

In substantial part, the allegations set out in the criminal charges are the same as those that appear in the letter of discharge. Therefore, significant portions of this case are conclusively established against the Appellant and cannot be re-litigated. It is not necessary for the Department to prove by preponderance of evidence what has already been established beyond a reasonable doubt. Additionally, since the Appellant has been convicted, his presumption of innocence is no longer extant and the judgment against him is presumed to be correct.

The Appellant's attorney asserted that the Appellant is appealing his criminal convictions, but he failed to produce any evidence or call any witness to support this claim.

DISCUSSION

As a convicted felon, the Appellant is ineligible to work for the Los Angeles County Sheriff's Department. Government Code Section 1029 disqualifies any person who has been convicted of a felony from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county, or other political subdivision. Therefore, the Appellant cannot be reinstated as a deputy sheriff.

There is significant overlap between the criminal charges and the allegations in the letter of discharge. All three victims identified in the felony complaint are named in the first three sets of allegations in the letter of discharge.

Relying on *Pearson*, the Appellant argues that his felony convictions are insufficient to disqualify him from his position as a peace officer. In that case, the County argued that the plaintiff was automatically discharged upon his conviction of a felony and the Commission refused to hold a hearing. The Court found that the Civil Service Commission must hold a hearing on the question of whether the grounds specified in the letter to the plaintiff justified his discharge. In this case, the Commission has directed that the Appellant be granted a hearing and a hearing was indeed conducted before the undersigned Hearing Officer. Thus, *Pearson* is not dispositive.

Moreover, in *Pearson*, the basis for his discharge "was completely distinct" from the charge against the plaintiff in the felony trial. Here, the Appellant's letter of discharge and the basis of the felony conviction overlap as to three of the identified female victims

and the Appellant's criminal conduct described as to each. Thus, as the Department argues, the criminal conviction is conclusive as to the allegations in the charging document.

The Department also correctly asserts that an issue decided in a prior criminal proceeding is conclusively determined in a subsequent civil action, citing *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, and *McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138. The Appellant was convicted following a criminal trial and, under the doctrine of collateral estoppel, he is precluded from re-litigating the charges of misconduct as they relate to the three females whose allegations were adjudicated in the criminal trial.

On this point, the Appellant asserts that the criminal judgment is not final for purposes of collateral estoppel because an appeal is pending. The Appellant introduced no evidence of a pending appeal at the hearing. However, attached to his post-hearing brief is a Notice of Appeal dated May 29, 2012, received by the Superior Court on June 7, 2012, from Michael J. Leonard, the Appellant's attorney. Also attached is a 30-page undated and unsigned document identified as "Appellant's Opening Brief" from Mr. Leonard. Public records of the Second Appellate District reveal that the Appellant's criminal conviction is on appeal in Division Six of the Second District Court of Appeal.[4]

However, despite the fact that an appeal is pending in the Appellant's criminal case, under Penal Code Section 1237(a), the final judgment of a felony conviction occurs at the time of sentencing. Thus, for purposes of collateral estoppel, the Superior Court's

[4] It is *People v. Fitzpatrick*, Case No. B241836. Civil Service Rule 4.10B permits the Hearing Officer to take judicial notice to the same extent as in civil actions. And see, California Evidence Code Section 452(d) (judicial notice may be taken of the records of any state court).

order on May 25, 2012, is a final judgment. The jury's findings that concerned the same allegations as appear in the notice of termination are conclusively determined.

The Appellant's assertion that hearsay evidence cannot support the Department's burden in this case is unavailing. Civil Service Rule 4.10 B provides that hearsay evidence shall not be sufficient in itself to support a finding "unless it would be admissible over objection in civil actions." Evidence Code Section 1300 provides that "evidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the judgment...." Thus, the record of the Appellant's felony conviction is not hearsay and may support the Department's charges as set out in the discharge letter of February 4, 2011.

FINDINGS OF FACT

1. The Appellant was convicted by a jury of six felony charges on October 7, 2011, and was sentenced to nine years in state prison (Department Exhibit 2B).

2. Five of the six counts included in the criminal complaint and adjudicated during the jury trial concern the same individuals and allegations of misconduct as appear in the letter of discharge served on the Appellant dated February 4, 2011.

CONCLUSIONS OF LAW

1. The allegations in the Department's letter dated February 4, 2011, that were adjudicated in the criminal jury trial are true.

2. The Department has demonstrated by competent evidence that the Appellant engaged in the misconduct charged.

3. The Appellant, by virtue of his felony conviction and Government Code Section 1029, is disqualified from holding office as a peace officer or being employed as a peace officer by the County of Los Angeles.

4. As a convicted felon, the Appellant is prohibited by Penal Code Section 29800(a) from owning, using, or possessing a firearm. This prohibition necessarily impairs his qualification to service as a sheriff's deputy and bars his reinstatement to his position as a sergeant with the County of Los Angeles.

5. Discharge is the appropriate level of discipline.

RECOMMENDATION

For the reasons expressed above, the undersigned Hearing Officer recommends that the appeal of Mark Fitzpatrick be DENIED.

Dated: April 16, 2013

Carol A Vendrillo

CAROL A. VENDRILLO, ESQ.
Hearing Officer



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

February 4, 2011

Sergeant Mark Fitzpatrick, #[redacted]
[redacted]

Dear Sergeant Fitzpatrick:

On January 13, 2011, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2221167. You were also advised of your right to review the material on which the discipline was based.

You did not exercise your right to respond. The grievance period involved has now elapsed, with no change in discipline.

You are hereby notified that you are discharged from your position of Sergeant, Item No. 2717A, with this Department, effective as of the close of business on February 4, 2011.

An investigation under File Number IAB 2221167, conducted by Internal Affairs Bureau has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about May 24, 2008, you conducted a traffic stop of a lone female, Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession and/or treated Ms. [redacted]n a disrespectful and/or uncivil manner, as evidenced by, but not limited to, the following:

   a) pointing your flashlight at [redacted] breasts and then saying words to the effect of, "Wow, that's a really sexy outfit

you've got there," and/or "Wow, those are nice. Are they real?" and/or;

b) responding to [redacted] question about whether or not she was going to jail, by saying words to the effect of, "it may be your lucky night," and when [redacted] asked you what you meant by that, asking [redacted] if she would expose her bare breasts to you, and/or;

c) putting your hand inside [redacted] dress and fondling her bare breast, and/or;

d) telling [redacted] that you were going to do her a "favor" by escorting her to her residence and then inappropriately asking [redacted] for her telephone number, and/or;

e) reminding [redacted] that you could have arrested her for driving under the influence and could have impounded her car and then asking [redacted] what she was going to do for you in return, and/or;

f) asking [redacted] how "clean shaven" she was and then telling her you "wanted to see," and/or;

g) asking [redacted] what type of underwear she was wearing..."a thong...a G-string?" and/or;

h) instructing [redacted] to also pull down her underwear after she pulled down only her leggings, and/or;

i) while kneeling in front of [redacted] instructing her to pull her leggings and underwear down a second time and then telling her to "open her vagina," whereupon you placed your hand on her bare genitals and then penetrated her vagina with the tip of your finger, and/or;

j) putting your arms out to hug [redacted] after she gave you a little push and told you she had to go inside her residence, and/or;

k) telephoning [redacted] after she went inside her residence and calling her multiple times over the next several days and leaving messages.

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/050.15, Duties of Deputy Personnel; and/or 3-01/050.20, Duties of All Members, on or about May 24, 2008, you failed to perform your duties in a manner which would tend to establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Department and/or failed to take appropriate police action, as evidenced by, but not limited to, failing to properly perform field sobriety tests on a female motorist, [redacted] whom you suspected of driving under the influence of alcohol and/or allowing [redacted] to drive her vehicle home while potentially impaired.

3. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about May 2008, you conducted a traffic stop of Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) instructing [redacted] to re-arrange her clothing to check for contraband by pulling her blouse and bra away from her body and pulling the waistband of her pants away from her body, and then shining your flashlight on [redacted] breasts and front waistband area.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about May 27, 2008, you conducted a traffic stop of Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) instructing [redacted] to lift her bra away from her body and then telling her to unbutton and/or unzip her pants, and making the comment, "You could be a porno star" and/or "you have nice 'boobs'," or words to that effect, and/or;

b) telling [redacted] you wanted to have sex with her.

5. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about the Summer of 2008, you conducted a traffic stop of Ms. [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

   a) asking [redacted] if she was wearing a shirt under her jacket.

6. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or about an unknown date in 2008, you conducted a traffic stop of Ms. [redacted] and her passenger, [redacted] and failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, and/or treated [redacted] and [redacted] in a discourteous and/or uncivil manner, as evidenced by, but not limited to:

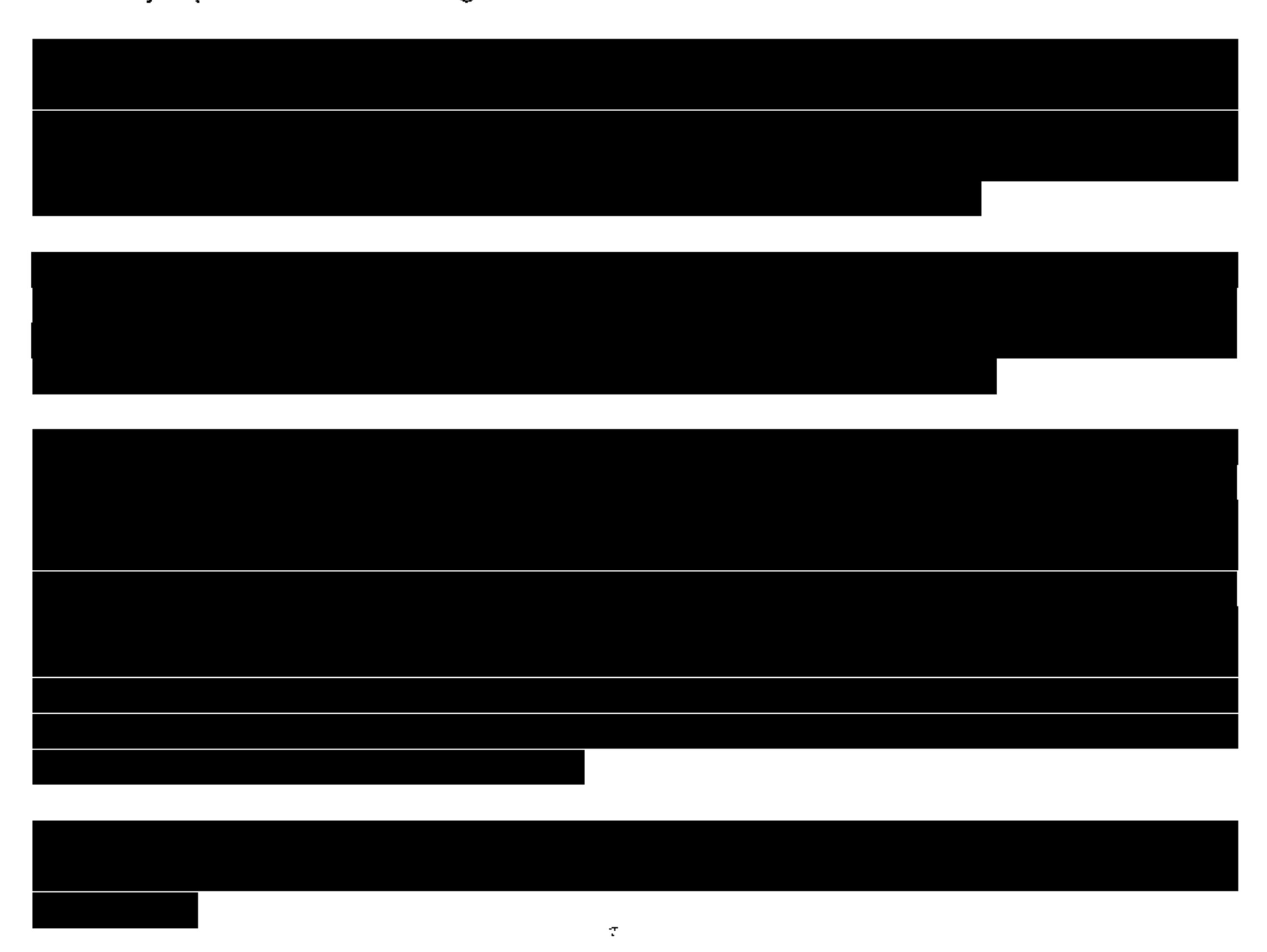
   a) asking [redacted] if she had any tattoos, and/or asking if you could see her tattoos, and/or;

   b) asking personal questions of [redacted] such as where she lived and with whom she lived, and when she responded that she lived with her [redacted], saying words to the effect of, "you are too young to be [redacted] and/or "you have a nice body for someone who has a [redacted]" and/or;

   c) asking [redacted] if she had an [redacted] boyfriend.

Your actions are contrary to this Department's Core Values, Mission and Creed. Thus, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department and you have failed to conform to the work standards established for your rank and/or position.

In addition to the above investigation, you have been the subject of three separate investigations, wherein similar allegations of sexual misconduct were made against you. A brief synopsis of each investigation is listed below.



[redacted]

[redacted]

[redacted]

[redacted]

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

PAUL K. TANAKA
ASSISTANT SHERIFF

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

PKT:RAA:JMG:md

c: Advocacy Unit
Cecil W. Rhambo Jr., Chief, Field Operations Region II
Diane E. Walker, Captain, Compton Station
Internal Affairs Bureau
Office of Independent Review (OIR)
Kevin E. Hebert, Captain, Personnel Administration